United Nations A/64/289

General Assembly

Distr.: General
12 August 2009

Original: English

Sixty-fourth session
Item 71 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Note by the Secretary General

The Secretary-General has the honour to transmit to the General Assembly the report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, submitted pursuant to Human Rights Council resolution 11/5.

* A/64/150.

09-45568 (E) 030909

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Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Summary

In his initial report to the Human Rights Council (A/HRC/11/10), the independent expert observed that although the debate concerning the responsibility for sovereign debt incurred in questionable circumstances has a long history, it has, since the Monterrey Consensus, assumed a prominent place in discussions regarding the just, equitable and sustainable resolution of the debt problem of developing countries. In particular, the recognition in the Monterrey Consensus that creditor and debtor countries are both equally responsible for preventing and resolving unsustainable debt situations, has opened up the debate on the issue of creditor co-responsibility for what is termed "illegitimate debt". In the present report, which is submitted pursuant to Human Rights Council resolution 11/5, the independent expert highlights the relevance of the concept of illegitimate debt to global efforts to find a fair and durable solution to the debt crisis. The report argues that human rights considerations must form part of the efforts towards the formulation of the concept of illegitimate debt in precise terms.

The present report contains five sections. Section I introduces the report. Section II sketches the activities undertaken by the independent expert since the submission of his initial report to the General Assembly in 2008. The substantive part of the report, section III, reviews the various definitions of illegitimate debt set forth by debt relief campaigners and others, and proposes that the human rights principles of participation, inclusion, transparency, accountability, the rule of law, equality and non-discrimination may provide invaluable guidance in efforts to formulate an internationally accepted definition of illegitimate debt. The section also argues that national audits of debt/lending portfolios and international debt arbitration are all potentially useful tools in addressing the problem of illegitimate debt. Section IV briefly draws attention to the limitations of the current debt relief initiatives and calls for urgent and concerted efforts at the international level towards reform of the global financial system.

The report concludes with a number of recommendations, including calls for all States to support efforts to find a precise and meaningful definition of the concept of illegitimate debt, to establish an international independent arbitration mechanism on debt and to reform the international financial system.

Contents

		Page
I.	Introduction	4
II.	Activities undertaken	4
III.	Illegitimate debt	6
	A. Definition of illegitimate debt	7
	B. Concerns surrounding illegitimate debt	11
	C. Relevance of human rights principles	13
	D. Shared responsibility of creditors and debtors	15
	E. Debt audits	16
	F. Debt arbitration	17
IV.	Reform of the international financial architecture	18
	A. Existing debt relief mechanisms	18
	B. International financial system	19
	C. Alternative sources of international finance	20
V.	Conclusions and recommendations	21

I. Introduction

1. The independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights submitted his initial reports to the General Assembly (A/63/289) at its sixty-third session and to the Human Rights Council (A/HRC/11/10) at its eleventh session in accordance with the mandate set out in Council resolution 7/4 of 27 March 2008. In its resolution 11/5, the Council welcomed the report of the independent expert and requested him to submit reports to the Council and to the General Assembly on the implementation of the resolution. The present report is submitted in accordance with Council resolution 11/5.

2. In his report to the General Assembly (A/63/289), the independent expert outlined his vision and plan of implementation for the mandate. In his report to the Council (A/HRC/11/10), the independent expert proposed a preliminary conceptual framework for understanding the connection between foreign debt and human rights, based on international legal standards. He also indicated his intention to examine, inter alia, the issues of creditor co-responsibility and illegitimate debt during the period 2009-2010 (paras. 87-90). The present report briefly discusses the concept of illegitimate debt in a modest attempt to draw attention to the relevance of the concept to efforts to find a just, equitable and durable solution to the debt crisis, as well as to advance the debate on the concept.

II. Activities undertaken

3. Since he submitted his initial report to the General Assembly (A/63/289) in October 2008, the independent expert has participated in various meetings and has held consultations with a wide range of stakeholders. Between October and December 2008, these included consultations with the World Bank, the International Monetary Fund, the Inter-American Development Bank and non-governmental organizations in Washington, D.C., participation in a conference on the theme "Debt relief and beyond", organized by the World Bank in Washington, D.C., and a seminar at the Commonwealth Secretariat in London to mark the sixtieth anniversary of the Universal Declaration of Human Rights, along with the special rapporteurs on freedom of religion or belief (Asma Jahangir) and on the right to food (Olivier De Schutter). During the visit to the Commonwealth Secretariat, he and his fellow special procedures mandate holders also met with the Commonwealth Secretary-General, Kamalesh Sharma, to discuss collaboration between the United Nations special procedures and the Commonwealth Secretariat in the promotion and protection of human rights.

4. In its resolution 7/4, the Council requested the independent expert "to contribute, as appropriate, to the process entrusted with the follow-up to the International Conference on Financing for Development, with a view to bringing to its attention the broad scope of his/her mandate" (para. 4).[1] In accordance with the request, the independent expert attended the Follow-up International Conference on

[1] The Council also requested the Secretary-General to facilitate the independent expert's participation in and contribution to the follow-up process of the International Conference on Financing for Development (para. 7).

Financing for Development to Review the Implementation of the Monterrey Consensus held in Doha from 29 November to 2 December 2008 and participated in parallel events organized for non-governmental organizations. Regrettably, he was not afforded a sufficient opportunity to draw the attention of the Conference to the broad scope of his mandate as called for in Council resolution 7/4, his role having been confined to a brief intervention from the floor at the Conference round table on external debt. He further regrets to report that human rights received marginal attention in the discussions and in the outcome document. In his estimation, the international community missed a crucial opportunity to reform the international framework on debt.

5. Between January and July 2009, the independent expert participated in various meetings, including a seminar on the draft guiding principles on extreme poverty and human rights, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva; the tenth special session of the Human Rights Council, on the impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights; the annual meeting of special procedures mandate holders organized by OHCHR; and the International Conference on a Fair and Transparent Arbitration Mechanism on Illegitimate and Odious Debts, organized by the African Forum and Network on Debt and Development held in Johannesburg, South Africa, on 30 and 31 March, at which he spoke about the challenges and opportunities relating to the establishment of a debt arbitration mechanism under the auspices of the United Nations. On 4 June, he participated in a panel discussion on the theme "Southern countries: foreign debt versus human rights: means of identifying and cancelling illegitimate debts", organized by Centre Europe-tiers monde and Comité pour l'annulation de la dette du tiers monde (Committee for the Abolition of Third World Debt) as a side event during the eleventh session of the Human Rights Council. On 11 June, he participated in a conference held in Rome on sovereign, democratic and responsible finance, which was organized by the Campaign for Reform of the World Bank and at which he spoke on the ad hoc nature of the current responses to the debt crisis and the implications of the financial crisis for human rights and a future debt crisis. On 4 July, he participated in an expert meeting on the impact of the economic, social and cultural rights special procedures on human rights protection, organized by the Project on Economic, Social and Cultural Rights at the Geneva Academy of International Humanitarian Law and Human Rights and by the Friedrich Ebert Foundation.

6. In addition, the independent expert undertook his first country missions to Norway (28-30 April 2009) and Ecuador (2-8 May 2009) at the invitation of those Governments. The main objective of the missions was to examine the unique roles of those countries in the debate concerning illegitimate debt and to consider the effect, on the enjoyment of human rights, of recent decisions by both countries in relation to public debt, from the creditor and debtor perspectives. During his visits to the two countries, the independent expert met with a variety of stakeholders, including senior Government officials, civil society organizations, parliamentarians (Ecuador), representatives of international financial institutions (Ecuador), representatives of development agencies (Ecuador), and academics. He will submit reports on the missions to the Council at its fourteenth session next year.

7. In Council resolution 7/4, the independent expert was requested to seek the views and suggestions of States, international organizations, United Nations

agencies, funds and programmes, regional economic commissions, international and regional financial institutions and non-governmental organizations on the draft general guidelines with a view to improving it, as appropriate, and to present updated draft general guidelines to the Council in 2010. The guidelines are designed to be followed by States and by private and public, national and international financial institutions in the decision-making on and execution of debt repayments and structural reform policies, including those arising from debt relief. In his report to the General Assembly (A/63/289), the independent expert expressed his belief that in order to enhance the acceptability of the guidelines and the prospects for their effective implementation it was essential to ensure the fullest possible participation of all stakeholders in their development. In this regard, he indicated a desire to convene multi-stakeholder regional consultations on the guidelines. In its resolution 11/5 (para. 3), the Council called upon OHCHR to assist the independent expert in the organization and holding of regional consultations on the guidelines, including through the allocation of sufficient budgetary resources. Regrettably, no budgetary resources have been allocated to enable him to commence preparations for the regional consultations. The independent expert hopes that the necessary resources will be made available as soon as possible.

III. Illegitimate debt

8. Under international law, successor Governments assume the international rights, capacities and obligations of their predecessors, irrespective of the nature of the former regime.[2] Nevertheless, there are historical precedents when this principle has been challenged and wholly or partially set aside, notably through invocation of the odious debt doctrine.[3] For example, after the Spanish-American War of 1898, the United States contended that neither Cuba nor the United States should be held responsible for the debt incurred by the Spanish colonial Government in Cuba if it had been contracted without the consent of the Cuban people and had not been used for their benefit. Although Spain never accepted this argument, it assumed responsibility for the Cuban debt under the Treaty of Paris, signed between the United States and Spain on 10 December 1898. In the Tinoco Arbitration of 1923, the arbitrator, United States Supreme Court Chief Justice, William Taft, ruled that credits knowingly extended to a country for a dictator who used the money for his personal purposes should not be recoverable. More recently, the doctrine has been invoked to support demands for debt cancellation in Rwanda, Iraq and Nigeria. In 1998, the British House of Commons International Development Committee invoked the odious debt concept to recommend cancellation of Rwanda's debt:

[2] D. P. O'Connell, *State Succession in Municipal Law and International Law* (Cambridge, United Kingdom, Cambridge University Press, 1967), p. 369.

[3] As originally articulated by the legal scholar, Alexander Sack, in his seminal 1927 work, *The Effects of State Transformations on Their Public Debts and Other Financial Obligations*, a debt was presumed to be odious if it fulfilled three essential conditions simultaneously: (a) it was contracted by a despotic regime; (b) it was not used for the needs of the population of the borrower State; and (c) the creditor was aware of the nefarious use of the funds. A 2007 United Nations Conference on Trade and Development (UNCTAD) discussion paper authored by Robert Howse identifies 12 instances in which the odious debt doctrine had been invoked. In none of the cases was a claim rejected on the grounds that no such doctrine existed under international law. See R. Howse, *The Concept of Odious Debt in Public International Law*, UNCTAD discussion paper No. 185 (Geneva, UNCTAD, 2007).

"[t]he bulk of Rwanda's external debt was incurred by the genocidal regime which preceded the present administration ... Some would argue that loans were used by the genocidal regime to purchase weapons and that the current administration and, ultimately, the people of Rwanda, should not have to repay these 'odious' debts ... We further recommend that the Government urge all bilateral creditors, in particular France, to cancel the debt incurred by the previous regime".[4] In 2003, following its invasion of Iraq, the United States called for the cancellation of Iraq's debt on the grounds that it was odious, but this argument was later abandoned to avoid setting a precedent.[5] In 2005, the Nigerian Parliament asked the country's Government to repudiate a debt that had largely been inherited from the military dictatorships, particularly under Sani Abacha (1993-1998). However, the Government opted to negotiate with the Paris Club and was granted a 60 per cent reduction of its debt in exchange for an advance payment of the remaining 40 per cent (approximately $12 billion).[5]

9. In recent years, debt relief campaigners have increasingly invoked the more expansive, albeit controversial, concept of illegitimate debt as a rationale for sovereign debt repudiation or cancellation.[6] They contend that a substantial portion of poor country debt, estimated at more than $500 billion,[7] is illegitimate and should not be repaid. Section III reviews some of the definitions of the concept that have been proposed by the international debt relief movement and highlights the relevance of the concept to global efforts to find a fair and durable solution to the debt crisis, as well as the need for such efforts to incorporate a human rights perspective in order to assure an equitable and sustainable solution. Owing to limitations of space, the discussion is brief and highlights only the key aspects.

A. Definition of illegitimate debt

10. The term illegitimate debt has no formal definition in law and although various attempts have been made to define the term, there is no consensus on its precise meaning.[8] To date, illegitimate debt has been used to describe a variety of questionable debts.

11. The Tegucigalpa Declaration, adopted by the Latin American and Caribbean Jubilee 2000 Platform on 27 January 1999 uses the term illegitimate debt to refer to debt "contracted by dictatorships, Governments not elected by the people, as well as by Governments which were formally democratic, but corrupt"[9] and loans used

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[4] House of Commons International Development Committee, *Debt Relief*, 3rd report 1997-1998 (London: House of Commons) paras. 11, 57.

[5] Comité pour l'annulation de la dette du tiers monde, "Ecuador at the cross-roads", August 2007.

[6] The concept of illegitimate debt is a more expansive one than that of odious debt and is commonly used to refer to odious debt as well as any debt that is not sanctioned by law; debt that is unfair or objectionable; or debt that infringes on public policy. See New Economics Foundation, *Odious Lending: Debt Relief as if Morals Mattered* (London, New Economics Foundation, 2005). See also Jubilee USA Network, "Recent Developments on Odious & Illegitimate Debt", Briefing Note 5, April 2008.

[7] See D. Millet and E. Toussaint, "Figures relating to the debt for 2009", Committee for the Abolition of Third World Debt, 2009. See also J. Hanlon, "'Illegitimate' loans: lenders, not borrowers, are responsible", *Third World Quarterly*, vol. 27, No. 2 (2006), pp. 211-226.

[8] Howse, *The Concept of Odious Debt* (see footnote 3).

[9] See http://www.jubileesouth.org/news/EpKlpEAFyZxSKvhj.shtm.

against the interests of the people who are now required to repay them. It also uses the term to describe debt that swelled as a result of interest rates and negotiating conditions imposed by creditor countries and banks, who persistently and outrageously denied debtor countries the right of association, while the creditor groups joined together in veritable creditor syndicates (Paris Club, Management Committee), backed by the economic coercion of the International Monetary Fund and the World Bank.[9] The Declaration further calls for the cancellation of "immoral debt", namely, debt whose payment threatens the survival of present and future generations.

12. In 2000, the Canadian Ecumenical Jubilee Initiative posited the moral argument: "Repayment of the debt leads to serious deprivation which threatens the cohesion of the community. In such a situation, the debt is illegitimate. The justice of a contract may not be guaranteed if the relationship between the parties is too unequal. Similarly, a contract may not be legally binding if it endangers the health or the life of one of the parties. Ending a contract, or in this case cancelling or repudiating a debt, can be a moral response to what would be an immoral or illegitimate situation, should it continue."[10] The Initiative proposed a four-part definition of illegitimate debt, which included debts that are illegitimate to repay (namely, debts that cannot be serviced without causing harm to the population); debts incurred by illegitimate debtors and creditors acting illegitimately (e.g., debt incurred to prop up a suppressive regime); debts incurred for illegitimate uses (e.g., debts for projects that did not benefit the people in the manner they were intended or debts contracted for fraudulent purposes); and debts incurred through illegitimate terms (e.g., debt incurred with usurious interest rates).[10] In recent years, the Initiative has used the term illegitimate debt to question the legitimacy of the international financial system, which, it contends, is based on exploitation and should be changed.

13. The Latin-American Parliament has proposed four grounds for illegitimate debt: (a) the origin of the debt, given that in many cases they have been irregularly contracted; (b) where the creditor unilaterally increases interest rates; (c) the Brady Plan agreements,[11] which forced the Governments of indebted countries to renegotiate debts with implicit and forced recognition of illegitimate debts; and (d) the co-opting of Government negotiators, who sign the agreements and subsequently assume posts in the financial institutions that benefit from these agreements.[12]

14. According to the European Network on Debt and Development, illegitimate debts are: "[T]hose debts which did not benefit the populations of developing countries. This may be because the loan was contracted by a despotic power which

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[10] Canadian Ecumenical Jubilee Initiative, "Illegitimate debt: definitions and strategies for repudiation and cancellation", Policy Forum, Wycliffe College, Toronto, Canada, 15 and 16 November 2000.

[11] The Brady Plan (named after the United States Secretary of the Treasury, Nicholas F. Brady) was initiated in March 1989, ostensibly to address the debt crisis of the 1980s. The Plan offered an exchange of commercial bank claims for bonds guaranteed by the United States Treasury, on condition that the creditor banks reduced their claims and put the money back in circulation. For their part, the beneficiary countries undertook to consolidate part of their debt and implement International Monetary Fund structural adjustment programmes.

[12] See P. P. Frere, "Illegitimate debts, debt relief and citizen audits" in, *Upheaval in the Backyard: Illegitimate Debts and Human Rights: the Case of Ecuador-Norway* (2002).

then stole the cash, used it to build-up their military capabilities or to oppress the people, or because the loan was contracted for ill-conceived and corrupt development projects which failed".[13]

15. In a policy brief issued in 2002, the African Forum and Network on Debt and Development (AFRODAD) stated that illegitimate debts included debts contracted by dictatorships or repressive regimes and used to strengthen the hold of those regimes; debts contracted by corrupt Governments, which were stolen by senior public officials; debts used for improperly designed projects and programmes; debts that swelled as a result of high interest rates and other conditions imposed by lenders; and debts which could not be serviced without impoverishing a country's people.[14] In a subsequent paper, AFRODAD asserted that illegitimate debts can simply be classified as "debt incurred by illegitimate debtors and creditors acting illegitimately".[15] Thus, "illegitimate debt includes odious debts, loans secured through corruption, usurious loans, and certain debts incurred under inappropriate structural adjustment conditions".[15]

16. The Jubilee USA Network has identified the following as categories of illegitimate debt: loans that were given irresponsibly (e.g., when oil prices increased dramatically in the early 1970s, banks found themselves with large amounts of "petrodollars" and they pushed loans on developing countries in an attempt to have the "petrodollars" earn interest); loans given for ideological or political reasons during the cold war, rather than to promote development; and loans given to countries in circumstances where creditors knew the funds would be siphoned off by corrupt Government leaders.[16]

17. Jubilee South defines illegitimate on the basis of the historical context of the debt and argues that people in developing countries should not have to pay for loans that never benefited the population. In addition, it asserts that "debt continues to be used as a tool of domination that ensures easy access by creditor nations and institutions to the resources of the South".[16]

18. The most systematic attempts to define the concept appear to be those by Joseph Hanlon and the New Economics Foundation. According to Hanlon, illegitimate debt is "debt that the borrower cannot be required to pay because the original loan or conditions attached to that loan infringed the law or public policy, or because they were unfair, improper, or otherwise objectionable. It does not include loans which were legitimate but which the borrower cannot now afford to repay, or which the borrower argues should be set off against other claims".[17] This definition recognizes that the conditions attached to loans, such as excessive interest rates, can have harmful consequences for a borrower country in much the same way that the loan itself might have. After reviewing the dictionary definitions of the word "illegitimate" and the various definitions of illegitimate debt set out in the Tegucigalpa Declaration, the Canadian Ecumenical Jubilee Initiative and AFRODAD,

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[13] See http://www.eurodad.org/aid/?id=114.

[14] AFRODAD, "Fair and transparent arbitration mechanism on debt", Policy Brief No. 1/2002.

[15] AFRODAD, *The Illegitimacy of External Debts: the Case of the Democratic Republic of the Congo* (2005), pp. 11 and 12.

[16] See http://www.jubileeusa.org/de/truth-about-debt/dont-owe-wont-pay/the-concept-of-odious-debt.html.

[17] J. Hanlon, "Defining illegitimate debt and linking its cancellation to economic justice" (Milton Keynes, Open University, 2002), p. 53.

and debt resulting from irresponsible projects that failed to serve development objectives or caused harm to the people or the environment.[23]

21. These definitions indicate that illegitimacy is not narrowly conceived of as a purely legal issue but rather as a broader concept encompassing the ethical, social, political and economic implications of debt. It can be argued that a common thread implicit in most definitions of illegitimate debt is the theme of injustice, seen in the definitions outlined above, which use terms such as "corruption", "oppress", "tool of domination", "unfair" and "usurious". Illegitimate debt impedes the realization of human rights due to improper actions on the part of the lender, borrower, or both. The negative impacts cut across all sectors but are particularly profound in relation to the provision of basic services in the areas of health, education, housing, water and sanitation.

22. The independent expert is of the view that the various formulations reviewed above offer a reasonable starting point for the definition of illegitimate debt in more precise terms. However, much work needs to be done in order to formulate the concept of illegitimate debt as an internationally accepted legal term with precise criteria. This is important and necessary work that must be undertaken urgently, given that the populations of indebted countries around the world continue to suffer from the negative effects of questionable debt, the servicing of which uses up already scarce resources that are insufficient even for the provision of basic services designed to ensure the well-being of citizens. In this regard, the independent expert notes, with appreciation, that the United Nations Conference on Trade and Development (UNCTAD) has recently begun a three-year project on promoting responsible sovereign lending and borrowing, including developing guidelines and criteria for assessing legitimacy of sovereign debt. The main objectives of the project, which is funded by the Government of Norway, are, inter alia, to document best practices on responsible sovereign lending and borrowing; to develop a set of guidelines and criteria for assessing the legitimacy of sovereign debt; and to promote discussion on a structured approach to resolving sovereign debt defaults and disputes. The independent expert strongly supports those efforts and considers that the development of guidelines and criteria must incorporate a human rights perspective if they are to promote responsible lending and borrowing. Consequently, he has initiated a dialogue with UNCTAD to identify areas of collaboration.

B. Concerns surrounding illegitimate debt

23. There are a number of concerns, on the part of both creditors and debtors, relating to the delineation and practical implementation of the concept of illegitimate debt.[24] Section B outlines some of those concerns.

24. First, the broad range of criteria for illegitimacy advanced by non-governmental organizations has led to the observation that the: "Sum of these criteria ... is a very finely-meshed net, in fact it is so finely meshed that it appears

[23] See Government of Norway, *Debt Relief for Development: A Plan of Action* (Oslo, Ministry of Foreign Affairs, 2004) p. 18. See also http://www.jubileeusa.org/truth-about-debt/why-drop-the-debt.html.

[24] For a discussion of the practical/political arguments against granting debt relief on the basis of legitimacy considerations, see Government of Norway, *Debt Relief for Development*, pp. 20-22 (see footnote 23).

to catch all debt. If all these criteria are accepted ... to advocate cancelling 'illegitimate debt' may easily be seen as a recommendation to *cancel all developing countries' debt*. This can hardly be regarded as either appropriate or desirable"[25] (emphasis in original).

25. Second, there is a concern by some that post hoc decisions on illegitimacy of debts might destabilize banking systems.[26] Nevertheless, it has been contended that in domestic legal systems, court decisions on legitimacy are post hoc, thus integrating legitimacy considerations into the due diligence applied to all loans, and banks have no problem with this.[27] Hanlon argues that while lenders would prefer a prior declaration of illegitimacy this would prove difficult in practice because illegitimate regimes usually have the support of at least a major power that would frustrate any attempt to declare its client regime illegitimate.[27] Conversely, he proposes a prior declaration of legitimacy whereby a loan will be considered automatically legitimate if: (a) it has been approved by a national legislative body; and (b) such legislative body has been elected in an internationally recognized election.[27] However, Hanlon's proposal may also prove problematic in situations where no relevant empowering provisions exist in the national law. In such an event, the most feasible option would be a declaration of legitimacy by an international arbitration mechanism on debt.

26. Third, there is some disquiet about the implications of unilateral decisions by indebted countries to repudiate debts that they consider illegitimate. It is argued that such repudiation could have a negative impact on the international credit ratings of the repudiating countries. This would, in turn, reduce the opportunities of those countries to receive loans, as well as their ability to attract foreign investment.[28] Ideally, the decision to deem debt as illegitimate and, most importantly, the assessment leading to such a decision, should be the result of collaborative and transparent efforts between creditors and debtors, with the informed participation of civil society organizations and other relevant stakeholders.

27. Finally, there is an apprehension that creditor acknowledgement of illegitimacy would not only constrain creditors to (unconditionally) cancel the debt in question but could also lead to demands by debtors for reparation for the harm occasioned by the debt. However, it is important to stress that claims of illegitimacy would have to be assessed on a case-by-case basis. In this regard, an international independent debt arbitration mechanism, based on the consent of all parties, would serve as an impartial forum for securing objective rulings.

28. It should be underlined that while the concept of illegitimate debt continues to generate debate, the core issue is that of justice and thus one on which every State, in theory, can find common ground. In this regard, it should be recalled that the Universal Declaration of Human Rights proclaims that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment ... or other lack of

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[25] Government of Norway, *Debt Relief for Development*, p.18 (see footnote 23).

[26] Hanlon, "Illegitimate loans" (see footnote 7).

[27] Ibid, p. 222.

[28] M. Kremer and S. Jayachandran, "Odious debt", *Finance & Development*, vol. 39, No. 2 (2002); Christian Aid, "Enough is enough: the debt repudiation option", January 2007. Christian Aid argues that repudiation comes at a cost and needs to be treated seriously.

livelihood in circumstances beyond his control" (art. 25) and that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (art. 28). Thus, while an assessment as to when debts undermine justice and jeopardize the realization of an adequate standard of living for all may prove a complex undertaking, difficulty is not an excuse for non-action. In all circumstances, the need to ensure justice for all should be upheld.

29. It is also important to underscore that not all debt is bad or illegitimate. Indeed, loans may provide States with the necessary funds to invest in the provision of basic services to the population and therefore assist States in fulfilling their human rights obligations, particularly those relating to economic, social and cultural rights. The existence of illegitimate debt should not be an excuse for poor planning, misuse of funds or failure to fulfil human rights obligations by the Governments of indebted countries. Nevertheless, there are clear cases where Governments are constrained to divert scarce resources from State budgets to repay loans under unjust circumstances. The process of conducting audits on debt/lending portfolios by both creditor and debtors, described below, can be useful in ascertaining the nature of specific loans and deciding on the most appropriate way forward.

C. Relevance of human rights principles

30. As indicated earlier in the present report, the independent expert strongly supports efforts towards elucidation of the concept of illegitimate debt in more precise terms and is of the view that human rights considerations must necessarily form part of such efforts. Human rights language, with the body of international human rights law behind it, is uniquely equipped and indeed, a necessary tool for the adequate development of specific criteria and legally enforceable standards to explain the unjust nature of certain debt. It is worth recalling, in this regard, that the human rights treaty bodies have often urged international financial institutions to pay greater attention to the protection of human rights in their lending policies, credit agreements and debt relief initiatives. For example, in its General Comment No. 2, on article 22 of the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights has indicated that "[i]nternational measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation".[29]

31. It is also notable that the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights deem a human rights violation of omission, "[t]he failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations" (para. 15 (j)).

32. Since illegitimate debt is rooted in the concept of injustice, human rights principles can provide invaluable guidance on how to create a more responsible international financial environment in which the effects of past injustices can be

[29] See also General Comment No. 4, on the right to adequate housing, para. 19; General Comment No. 12, on the right to adequate food, para. 41; General Comment No. 13, on the right to education, para. 60; and General Comment No. 14, on the right to the highest attainable standard of health, para. 64.

sufficiently addressed and the recurrence of illegitimate debt avoided. In particular, the human rights principles of participation, inclusion, transparency, accountability, the rule of law and non-discrimination, which find expression in international human rights law, provide universally recognized standards against which the legitimacy of debt can be assessed.

33. All individuals and communities have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. This includes decision-making processes concerning the negotiation, contraction and use of loans. Participation can be ensured, for instance, through representative national legislative bodies that have been elected through an electoral process deemed free and fair by independent observers. With specific reference to the issue of illegitimacy, debt arising from loans that have been contracted or, after contraction, have been used, without the informed participation of the people through their duly elected representatives, could be considered illegitimate.

34. As the primary duty bearers under international human rights law, States are answerable for the observance of human rights. Thus, they have to comply with the legal norms and standards enshrined in international human rights instruments. If they fail to do so, individuals or groups whose rights are infringed or threatened are entitled to seek redress before the competent bodies in accordance with the rules and procedures provided by law. In the context of debt, accountability entails that creditors should acknowledge the accountability of debtor Governments to their own citizens in the loan negotiation and contraction process and that creditors should avoid linking intrusive policy conditions to loans or debt relief as these may impair the principles of accountability and participation. It also means that the Governments of debtor countries should be open and accountable to their people in the contraction of loans and in the use of borrowed funds.

35. All individuals are equal as human beings and by virtue of their inherent dignity. Thus, no one should suffer discrimination on the basis of such attributes as race, ethnicity, gender, language, social or geographical origin. Further, the principle of non-discrimination requires that States ensure that all measures adopted to fulfil their human rights obligations avoid disproportionate effects and that targeted measures are taken to secure equality of access to basic services for all groups in society, especially the poorest. In the context of foreign debt, non-discrimination can be ensured, for example, by assessing the distributional consequences of loans across society to make certain that the borrowed funds are used equitably to benefit all individuals.

36. In relation to illegitimate debt, many of the definitions of the concept reviewed above include the criteria in which the loan funds were not used for the benefit of the population but rather for the elite in the borrowing country. For example, the Canadian Ecumenical Jubilee Initiative and AFRODAD definitions of illegitimate debt include projects that did not benefit the people as they were intended to do. Such a situation may violate the principle of equality and non-discrimination.

37. The independent expert is of the view that any assessment of the legitimacy of a debt should take into account the activities to be funded, the negotiation of the loan, the terms of the contract and the use of the loan as stipulated in the contract. At each stage, the human rights principles of accountability, participation, inclusion, transparency, accountability and non-discrimination must be upheld by both the lender and the borrower. Thus, the lack of participation, transparency and

accountability in such processes, as well as the lack of accessible redress mechanisms and the exclusion of certain groups in the decision-making concerning the use of borrowed funds should all be factors in assessing the legitimacy, or otherwise, of a debt.

38. It should be noted that the foregoing proposals are offered on a tentative basis and that more research and consultation are needed in order to clarify what mechanisms could be used to ensure adherence to the human rights principles outlined above in the context of negotiations and discussions concerning foreign debt, as well as how those principles may inform the framework for assessment of illegitimate debt. In this regard, the independent expert will continue to explore and consult on these issues.

D. Shared responsibility of creditors and debtors

39. The principle of the shared responsibility of debtors and creditors is at the heart of an equitable global financial system. As underscored in the Monterrey Consensus, "debtors and creditors must share responsibility for preventing and resolving unsustainable debt situations."[30] Responsible lending is required on the part of creditors; responsible borrowing and the use of loans is required on the part of debtors.

40. While the issue of creditor liability and misconduct is at the core of the illegitimacy debate, the independent expert considers that it may be more prudent to conceive of the problem as one of creditor co-responsibility in the spirit of the Monterrey Consensus. It is important, and in keeping with the principle of shared responsibility, that lenders examine the extent to which they have contributed to unsustainable debt burdens in developing countries and acknowledge responsibility for the debt burdens. Where the lender is connected with project design or the loan is linked to the borrower's acceptance of policy advice provided by the lender, the lender has to accept responsibility for debts incurred as a result of poorly designed projects or bad policy prescriptions.

41. The independent expert reiterates the view set out in his report to the Council (A/HRC/11/10) that it is vital to develop, as a key aspect of the shared responsibility of creditors and debtors, generally agreed criteria for the definition and treatment of illegitimate debt. The international community needs to work together to ensure responsible lending and borrowing that benefits the populations of the indebted countries and enhances the capacity of the Governments of such countries not only to invest in the provision of basic services but also to fulfil their human rights obligations. One possible way of achieving this could be through the inclusion of provisions in loan agreements which explicitly respect the national sovereignty and development priorities of borrower countries. Loan agreements could also include clauses concerning the human rights implications of the loan.

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[30] *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex, para. 47.

E. Debt audits

42. In recent years, debt audits have been undertaken in a number of countries by Governments and civil society groups. The purpose of the audits has been to ascertain the original terms of loans, how much interest has been paid, what the loan funds were used for, who borrowed the money and in whose name, and the role and identity of the lender.

43. National debt audits are a valuable analytical tool for determining the nature of a country's debt.[31] Audits may be useful for obtaining a comprehensive picture of a country's debt portfolio, assessing the impact of debt on the realization of human rights, ensuring that human rights principles have been upheld, and contributing to the development of an appropriate accountability mechanism and a sound debt management framework.

44. Audits may examine a variety of aspects of the debt. They could be used to examine the legality of the loan and to track the movement and use of funds. Audits may also assess the social and environmental impact of debt, as well as the extent to which the loan contributed to the borrower country's development and was used to fulfil human rights obligations via social spending, for example. Additionally, audits may be conducted to examine the circumstances surrounding the contraction and subsequent use of the loan, examining potentials for illegitimacy. A combination of approaches may be necessary in order to get a full picture of the debt portfolio and of its impact on the realization of human rights and to identify the necessary steps forward. In a similar vein, creditor countries can conduct audits of their lending portfolios in order to examine the basis for claims of illegitimacy and to ensure that past loans are consistent with their development cooperation policies and programmes.

45. A crucial requirement of any type of audit, from a human rights perspective, is open and informed participation by a diverse and representative group of actors throughout the entire process. In keeping with the principle of the shared responsibility of creditors and debtors and in order to enhance the perception of impartiality and the credibility of the results of the audit, it may be useful to include representatives of as many relevant stakeholders as possible in the audit process. In addition, the scope and targets of an audit must be made clear at the outset and the audit process must have a legal basis, so as to not undermine its credibility, while the technical expertise and time required to conduct a thorough analysis should not be underestimated. The results of the audit must also be shared in a timely and transparent manner with the wider public. Further, debt audits should be conducted on a regular basis as part of an institutionalized framework of monitoring and accountability.

46. In order for claims of legitimacy or illegitimacy to be taken seriously and to be accepted by all parties, it is necessary to ensure that all relevant stakeholders participate equitably in the auditing process. The purpose of an audit is to uncover the truth. In regard to the issue of illegitimate debt, audits may provide factual evidence to support claims made by creditors or debtors and, if conducted in a rigorous and transparent manner, may remove the potentially negative impact of

[31] Centre Europe-Tiers monde and Comité pour l'annulation de la dette du tiers monde, "Let's launch an inquiry into the debt: a manual on how to organize audits on third world debt", October 2006, p. 62.

unilateral action by debtors on their opportunities to obtain fresh loans on international markets.

47. It is also important to emphasize that the utility of a debt audit extends beyond ascertaining the nature of a country's debt. Since audits require the participation of a diverse range of actors, they are also a way of holding Governments accountable for their borrowing and resource utilization decisions.[32]

48. The independent expert urges creditors and debtors to undertake and/or support rigorous, transparent examinations of their debt/lending portfolios in order to assess the potential impact of debt on the ability of debtor countries to achieve their development objectives, including the Millennium Development Goals, and to fulfil their human rights obligations.

F. Debt arbitration

49. Over the years, numerous proposals for the establishment of alternative debt-work-out mechanisms, independent of the Bretton Woods institutions and comprising both creditors and debtors, have been made by scholars and commentators. Some of the proposals have drawn inspiration from the United States insolvency regime.[33]

50. In 1998, UNCTAD proposed the creation of an international bankruptcy court.[34] In his report entitled "We the peoples: the role of the United Nations in the twenty-first century" (A/54/2000), former Secretary-General, Kofi Annan proposed "an entirely new approach to handling the debt problem", which included the establishment of "a debt arbitration process to balance the interests of creditors and sovereign debtors and introduce greater discipline into their relations". In 2001 and 2002, Anne Krueger, First Deputy Managing Director of the International Monetary Fund, presented a proposal for a comprehensive sovereign debt restructuring mechanism analogous to domestic insolvency procedures such as the United States bankruptcy regime, but this was abandoned in 2003. In 2005, the first Conference of African Ministers of Economy and Finance called for a new mechanism outside the Paris and London Club frameworks for dealing with Africa's debt problem.[35] It should be noted, however, that none of the proposals was explicitly linked to the issue of illegitimate debt.

51. For its part, the international debt relief movement has promoted the idea of a fair and transparent arbitration process and linked the proposal for a debt arbitration mechanism to the illegitimacy debate.[36]

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[32] Jubilee USA Network, "Recent developments" (see footnote 6).

[33] See, e.g., K. Raffer, "Internationalizing United States municipal insolvency: a fair, equitable and efficient way to overcome a debt overhang", *Chicago Journal of International Law*, vol. 6, No. 1 (2005), p. 363 (Raffer favours an ad hoc arbitration panel established by debtors and creditors); C. G. Paulus and S. T. Kargman, "Reforming the process of sovereign debt restructuring: a proposal for a sovereign debt tribunal", paper presented at the workshop on Debt, finance and emerging issues in financial integration, Financing for Development Office, Department of Economic and Social Affairs of the United Nations Secretariat 8 and 9 April 2008.

[34] UNCTAD, *Trade and Development Report*, 1998 (United Nations publication, Sales No. E.98.II.D.10).

[35] See report of the first Conference of African ministers of economy and finance, 7 May 2005, Dakar (AU/CAMEF/Rpt (1)).

[36] See, e.g., AFRODAD, "Fair and transparent" (see footnote 14).

52. In the independent expert's estimation, an international independent debt arbitration mechanism under the auspices of a neutral, non-lending institution with sufficient global legitimacy — ideally, the United Nations — can help resolve unsustainable debt situations. Based on the principles of equity, transparency, inclusion and participation, the mechanism would help resolve debt repayment difficulties and disputes fairly and efficiently. As has been suggested by debt relief campaigners, the mechanism could also determine claims of illegitimacy of debt and decide on cancellation of such debt in accordance with an internationally recognized definition of the concept of illegitimate debt. It could also assess a country's ability to service its debt without undermining its capacity to invest in the provision of basic services to its citizens.[37] The establishment of such a mechanism would address a critical gap in the international financial system.

53. It is important to underscore that the full participation — in the spirit of the international cooperation envisaged under the Charter of the United Nations — of all relevant actors, including debtors and creditors (both bilateral and multilateral), will be necessary in order to create and implement a mechanism in which the interests of both creditors and debtors would be respected.

IV. Reform of the international financial architecture

A. Existing debt relief mechanisms

54. One of the most problematic aspects of the current multilateral debt relief initiatives is the concept of "debt sustainability", which has been defined by creditors very narrowly according to the ability of debtor countries to repay their debts in terms of their export earnings, irrespective of their other commitments.[38] This prevents governments in many indebted developing countries from meeting the basic needs of their citizens. Debt sustainability analyses also do not take into account the human rights implications of the debt, the role of the lender or the possible illegitimacy of the loans.

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[37] See, e.g., Hanlon, "Defining illegitimate debt", p. 60 (see footnote 17). By way of analogy, all national bankruptcy and insolvency regimes require that people retain an income sufficient to maintain a reasonable standard of living as well as the tools of their trade and, usually, their dwelling. From a human rights perspective, article 25 of the Universal Declaration of Human Rights states that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services". This provision is enshrined in legally binding form in article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

[38] According to the International Monetary Fund (IMF), the primary aim of the debt sustainability framework for low-income countries is to guide the borrowing decisions of low-income countries in a way that matches their need for funds with their current and prospective ability to service debt, tailored to their specific circumstances. See IMF, "The debt sustainability framework for low-income countries", October 2007. For a critique of the debt sustainability framework, see A. Caliari, *The New World Bank/IMF Debt Sustainability Framework: A Human Development Assessment* (Brussels, Coopération internationale pour le développement et la solidarité, 2006); European Network on Debt and Development, "Still missing the point: unpacking the new World Bank/IMF debt sustainability framework", September 2005. Available from http://www.eurodad.org/articles/default.aspx?=649; and Government of Norway, *Debt Relief for Development*, pp. 15-18 (see footnote 23). See also New Economics Foundation, *Debt Relief as if People Mattered* (see footnote 20).

55. In his report (A/59/2005) to the High-level meeting on financing for development held in September 2005, former Secretary-General Kofi Annan called for a redefinition of debt sustainability "as the level of debt that allows a country to achieve the Millennium Development Goals and reach 2015 without an increase in debt ratios". The independent expert firmly supports this call but would go further and suggest that any concept of debt sustainability should include an assessment of what minimum expenditure is required to enable a Government to meet its obligations to its citizens, including the provision of basic social services such as health and education.[39] In particular, human rights should be used as a basis for assessing debt sustainability and for the cancellation of all unsustainable debt. Such an approach would consider all indebted countries irrespective of their income and assess the level of debt they could carry without undermining their human rights obligations.

56. An examination of the fulfilment of human rights obligations, particularly with regard to social and economic rights, would provide an extremely useful framework for this approach. Given that these rights are set out within the body of international human rights law, the absence of an internationally accepted definition of illegitimate debt does not prevent analysis of the impact of existing loans on the realization of human rights. Of course, this is not to suggest that debt should be considered unsustainable, or illegitimate, whenever a debtor country is not able to ensure immediately the full enjoyment of all economic, social and cultural rights by everyone without discrimination, as the related human rights obligations require progressive realization of such rights, taking into consideration resource constraints.

57. It is also notable that a number of studies have shown that the current multilateral debt relief initiatives are ineffective. For example, a recent study by Erlassjahr and the Friedrich-Ebert Foundation, which assessed the vulnerability of the 24 since the launch of the Heavily Indebted Poor Countries Initiative, shows that more than half of the heavily indebted poor countries are at risk of entering a new phase of the debt crisis.[40] Given that Initiative was designed to offer a permanent "exit" from unsustainable debt, there is need for an alternative fair and transparent debt-work-out mechanism.

B. International financial system

58. The various types of debt claimed to be illegitimate are not only indicative of a major flaw in the current global financial system — a system that has proved to be in need of urgent reform — they also represent a key source of global inequality. As the independent expert observed in his initial report to the Council (A/HRC/11/10, para. 24), many countries spend more each year on debt service than they do on the basic needs of their people, such as education and health combined.[41]

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[39] It is notable that the report of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus (A/Conf. 202/7) states that "[t]ebt sustainability frameworks should also give due weight to the development needs of debtor countries".

[40] J. Kaiser, I. Knoke and H. Kowsky, *Towards a Renewed Debt Crisis? Risk Profiles of the Poorest Countries in the Light of the Global Economic Slowdown* (Berlin: Erlassjahr/Friedrich-Ebert Foundation, 2009).

[41] See also United Nations, report of the Follow-up International Conference, para. 60 (see footnote 39).

59. The issue of illegitimate debt represents an important, albeit controversial, area of the long-standing issue of the unsustainable indebtedness of low- and middle-income countries, which, in turn, represents just one aspect of the broader issue of an international financial system, which, in its current state, is inequitable, lacks transparency and largely serves the interests of countries that are already wealthy. Consequently, the illegitimate debt issue cannot be satisfactorily resolved without reform of the international financial system. Addressing some of the inequities in the international financial system, such as creditor domination, would to some extent, help establish a more equitable basis upon which solutions to questionable debt could be more effectively resolved.

60. Such reform must be aimed at the creation of a more inclusive system in which power, decision-making and benefits are shared beyond a select group of States. No equitable and sustainable solution to the debt problem can be provided by non-inclusive forums, in which only a handful of States participate. It is therefore important that all States participate in efforts to reform the international financial architecture. In this regard, it is worth recalling that in paragraph 9 of the Monterrey Consensus, States declared their commitment to "promoting national and global economic systems based on the principles of justice, equity, democracy, participation, transparency, accountability and inclusion". As the only inclusive institution with global legitimacy, the United Nations should be at the forefront of efforts to reform the international financial system.

61. There is need for a coordinated and truly global approach towards the development of a framework for responsible financing that incorporates the principles of fairness, mutual accountability and transparency, and enhances the capacity of States to achieve their development goals and fulfil their human rights obligations. Since injustice and discrimination are the main reasons for poverty, a human rights-based approach to development, which emphasizes principles of universality, equality and non-discrimination, participation, inclusion, accountability and the rule of law, must be reaffirmed and guide the process.

62. In order to avert a recurrence of the debt crisis, in general, and the build-up of unsustainable and questionable debt, in particular, it is necessary to create a new lending and borrowing framework based on the mutual responsibilities of creditors and debtors. The independent expert takes this opportunity to draw to the attention of all States the work that he is undertaking concerning the development of a responsible financing framework based on international human rights standards, namely, the draft general guidelines on foreign debt and human rights referred to earlier in the present report. He urges all States to support this work.

C. Alternative sources of international finance

63. Increasing frustration at the lack of equal standing given to all stakeholders in the international financial system, in particular developing countries, and the negative impacts of macro-economic prescriptions attached to loans, are a few of the reasons that developing countries have started to search for alternative sources of financing,[42] rather than rely on traditional multilateral and bilateral lenders. While the independent expert does not propose to offer any views on the viability of

[42] An example of such initiatives is the Banco del Sur.

such alternatives, he encourages the exploration of options through which developing countries may find sources of funding that would respect their sovereignty and national development priorities, as well as support the fulfilment of their human rights obligations. At the same time, the independent expert encourages developing and developed countries to continue to work together to ensure that existing sources of financing contribute to the raising of the standards of living of the people of the borrower countries.

V. Conclusions and recommendations

64. **The issue of illegitimate debt remains controversial, but few can argue against the criteria and principles that promote responsible lending and long-term debt sustainability. Efforts to elucidate the issue of illegitimate debt should be viewed from this perspective. The independent expert stresses that efforts to address the issue of illegitimate debt are tantamount to efforts to ensure justice in relation to loans, and he therefore remains assured that all States will find the pursuit of economic and social justice as a common basis for endeavours to comprehensively address the issue.**

65. **Although the absence of an internationally accepted definition of illegitimate debt has been cited as an obstacle in the efforts to systematically address the illegitimate debt issue at the global level, it is not an insurmountable obstacle and it should not be used as an excuse for not taking immediate action. States can and should examine their own debt/lending portfolios in terms of consistency and coherence with stated development policies and in order to ensure that loans contribute to sustainable development and the enjoyment of human rights in an equitable manner.**

66. **The concept of illegitimate debt is important to the search for an equitable and enduring solution to the debt problem of developing countries since it raises issues relating to the co-responsibility of creditors. Much of the international response to the debt crisis has focused on incompetence and misuse of loan funds by debtor countries and has largely ignored creditor co-responsibility. There is a need to integrate the concept of creditor co-responsibility into global responses to the debt crisis if a fair and enduring solution to the crisis is to be found and a recurrence of questionable debt, however characterized, avoided.**

67. **Human rights principles should underpin the framework to be used to determine whether a debt should be declared illegitimate. Consequently, the independent expert underscores the need for the inclusion of a human rights perspective in the important work of UNCTAD concerning the development of guidelines and criteria for analysing illegitimate debt, and he stands ready to assist in this process.**

68. **In order to tackle the nefarious effects of illegitimate debt and to prevent its recurrence, the current international financial and economic system should be restructured as a matter of urgency. The international community therefore needs to work together to develop a responsible financing framework that incorporates a human rights perspective and upholds the principles of fairness, mutual accountability and transparency, and enhances the capacity of States to, inter alia, fulfil their human rights obligations. In this connection, the**

independent expert will continue work on the development of guidelines to ensure that compliance with the commitments derived from foreign debt do not undermine the obligation of States' towards the realization of all human rights, particularly economic, social and cultural rights.

69. Creditors should scrupulously avoid providing loans for development projects that have not been comprehensively assessed, including in terms of their impact on the human rights of the population of the borrower countries. Such assessments must be undertaken with the full and informed participation of all stakeholders, including the affected communities in the borrower countries. Furthermore, all creditors (including international financial institutions) should ensure that their lending policies and programmes genuinely support the national priorities of borrower countries that have been agreed through democratic and participatory processes and that borrower countries have the liberty to design national policies that would enhance their capacity to achieve their development objectives and to fulfil their human rights obligations.

70. States should consider establishing mechanisms that ensure transparency, accountability and participation during the negotiation and contraction of loans, as well as mechanisms to monitor the spending of borrowed funds in order to guard against the corruption and misuse of funds and to monitor for potential negative impacts on the realization and enjoyment of human rights. Such mechanisms should include avenues for the public to bring concerns to the attention of the authorities and appropriate remedies.

71. Debtor countries should consider conducting debt audits to obtain a comprehensive picture of their debt portfolios and elicit information to assist them in the development of appropriate accountability and debt management frameworks. Likewise, creditor countries should consider conducting audits of their lending portfolios, with a view to objectively determining whether all loans are contracted and used in a manner not only consistent with their national development cooperation policies and universally recognized human right principles but also supportive of the development priorities of the debtor countries.

72. There is an urgent need to expand and deepen existing debt relief initiatives, including by cancelling all debts found to be illegitimate following transparent and rigorous auditing by both creditors and debtors. Such processes must include all stakeholders on an equal basis.

73. In the case of an existing debt whose legitimacy is questioned, the creation of a United Nations-based independent arbitration mechanism, as described above, should be supported by all States, as a fair and impartial body with the authority to determine the illegitimacy of the debt.

74. Finally, the independent expert considers that the current economic and financial crises affords the international community a unique opportunity to reassess the manner in which international economic policy decisions, including those relating to foreign debt, have been taken thus far. A new framework for economic governance that places human rights and people at the centre will not only make reforms of the international financial and economic system more sustainable and resilient to future crises, but will ensure that indebted countries

are afforded the necessary space to make policy choices that serve the interests and needs of their people. Human rights provide a clear and universally recognized framework that can inform the design of a just, equitable and enduring solution to the debt problem that has plagued developing countries for decades and impeded their ability to fulfil their human rights obligations. Human rights principles are also a critical factor in the design of a framework for responsible financing that would, inter alia, ensure that the recurrence of unsustainable levels of debt, as well as the generation of illegitimate debt, are avoided.